

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

AID FOR WOMEN, on its own behalf;
TERI AUGUSTUS, L.M.S.W.;
MARGOT BRECKBILL, R.N.;
TRACY COWLES, M.D.; WILLOW
EBY, R.N.; VICKI EPP, L.B.S.W.;
MARGARET ESTRIN, M.D.;
HERBERT HODES, M.D.; TRACI
NAUSER, M.D.; COLLEEN
O'DONNELL, R.N.-C.; STACI
MORGAN, D.O.; BETH MCGILLEY,
Ph.D.; TRINA WHEELER, L.M.S.W.;
SHERMAN ZAREMSKI, M.D., on
behalf of themselves and their
adolescent patients and clients under
the age of sixteen and as
representatives of a class of similarly
situated individuals.

Plaintiffs - Appellees/
Cross-Appellants,

v.

NOLA FOULSTON, in her official
capacity as District Attorney, 18th
Judicial District of Kansas, and as
representative of a class of all county
and district attorneys in the state of
Kansas,

and

PAUL MORRISON, Attorney General
for the State of Kansas,

Defendants - Appellants/
Cross-Appellees.

Nos. 06-3187, 06-3188 &
06-3202

THE AMERICAN ACADEMY OF
FAMILY PHYSICIANS; AMERICAN
MEDICAL ASSOCIATION;
AMERICAN MEDICAL WOMEN'S
ASSOCIATION; AMERICAN
NURSES ASSOCIATION;
AMERICAN SOCIETY FOR
ADOLESCENT PSYCHIATRY;
ASSOCIATION OF REPRODUCTIVE
HEALTH PROFESSIONALS;
KANSAS CHAPTER OF THE
AMERICAN ACADEMY OF
PEDIATRICS; KANSAS MEDICAL
SOCIETY; KANSAS PUBLIC
HEALTH ASSOCIATION; KANSAS
SECTION OF DISTRICT VII OF THE
AMERICAN COLLEGE OF
OBSTETRICIANS AND
GYNECOLOGISTS; KANSAS
STATE NURSING ASSOCIATION;
NATIONAL ASSOCIATION OF
SOCIAL WORKERS; KANSAS
CHAPTER OF NATIONAL
ASSOCIATION OF SOCIAL
WORKERS, SOCIETY FOR
ADOLESCENT MEDICINE;
AMERICAN CIVIL LIBERTIES
UNION; AMERICAN CIVIL
LIBERTIES UNION OF KANSAS
AND WESTERN MISSOURI;
NATIONAL FAMILY PLANNING
AND REPRODUCTIVE HEALTH
ASSOCIATION, NATIONAL
CHILDREN'S ADVOCACY
CENTER, NATIONAL LEGAL

FOUNDATION and KANSAS
LEGISLATORS,

Amici Curiae.

ORDER

Filed September 18, 2007

Before **KELLY, McCONNELL**, and **GORSUCH**, Circuit Judges.

These appeals are before the court based on a motion by Appellees-Plaintiffs to dismiss, Appellant-Defendant's response, and Appellees-Plaintiffs' reply. On April 18, 2006, the district court entered an order and separate judgment in favor of Plaintiffs, permanently enjoined enforcement of Kan. Stat. Ann. § 38-1522, a child abuse reporting statute. *See Aid for Women v. Foulston*, 427 F.Supp.2d 1093 (D. Kan. Apr. 18, 2006). These appeals followed.

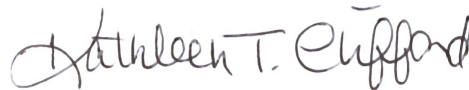
Appellees-Plaintiffs presently seek dismissal of these appeals based on mootness as a result of Kansas lawmakers repealing the reporting statute, § 38-1522, challenged in their complaint and in these appeals. The statute was replaced with a new reporting statute that became effective January 1, 2007. In response, Appellant-Defendant states she does not object to dismissal of the appeals but requests that such dismissal be based on lack of jurisdiction rather than mootness.

Upon review, the court finds that these appeals were rendered moot as a result

of repeal of § 38-1544, and that dismissal based on mootness is appropriate. *See Sinochem International Co. v. Malaysia International Shipping Corp.*, ___ U.S. ___, ___, 127 S.Ct. 1184, 1188 (2007) (holding that federal court may dismiss an action on the basis of a threshold non-merits issue without first determining whether it has jurisdiction over case).

Accordingly, these appeals are **DISMISSED** *as moot*. The district court's April 18, 2006 Order and separate judgment are **VACATED**. This case is **REMANDED** to district court with instructions to dismiss without prejudice. The mandate shall issue forthwith.

Entered for the Court,
Elisabeth A. Shumaker, Clerk

A handwritten signature in black ink, reading "Kathleen T. Clifford". The signature is written in a cursive, flowing style.

Kathleen T. Clifford
Attorney - Deputy Clerk